



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0069]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Charles Machine Works Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on Charles Machine Works, Inc.'s (CMW) application for an exemption from the Agency's prohibition against the use of gravity or syphon-fed fuel systems for auxiliary equipment installed on or used in connection with commercial motor vehicles (CMVs). CMW believes that the use of gravity or syphon-fed fuel systems for auxiliary equipment that operates only when the CMV is parked would maintain a level of safety that is equivalent to, or greater than, the level that it would achieve without the requested exemption.

DATES: Comments must be received on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2019-0069 using any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.
- Fax: 1-202-493-2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

- Hand Delivery: Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the “Public Participation” heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Public participation: The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and

retrieval help and guidelines under the “help” section of the <http://www.regulations.gov> Web site as well as the DOT’s <http://docketsinfo.dot.gov> Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-0676, Luke.Loy@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant exemptions from the FMCSRs. Pursuant to the implementing regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the

decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

CMW's Application for Exemption

CMW has applied for an exemption from 49 CFR 393.65(d) to allow the use of gravity or syphon fed fuel systems for auxiliary equipment installed on or used in connection with CMVs that operate only when the CMV is not operating on the highway. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.65 of the FMCSRs prescribes certain requirements that are applicable to all CMV fuel systems. The requirements in this section apply to systems for containing and supplying fuel for the operation of (1) motor vehicles or (2) auxiliary equipment installed on, or used in connection with, motor vehicles. Section 393.65(d) prohibits a fuel system from supplying fuel by gravity or syphon feed directly to the carburetor or injector.

CMW is a family of companies focused on the installation, maintenance, rehabilitation, and replacement of underground pipe and cable for the telecom, oil, electricity, gas, water, and wastewater industries. Its family of companies includes Ditch Witch®, Subsite® Electronics, DW/TXS®, HammerHead®, Radius® HDD, American Augers®, Trenchor® and MTI® Equipment. CMW designs, manufactures and sells a range

of products to cover the full life-cycle of underground pipe and cable, including horizontal directional drills, walk and ride trenchers, utility loaders, vacuum excavators, asset locators, pipe rehabilitation solutions and after-market tools.

Some of the equipment designed and manufactured by CMW utilize small, commercially available internal combustion engines to power auxiliary equipment that is permanently mounted on a CMV. CMW states that while auxiliary equipment that is permanently mounted to CMVs is considered part of the CMV and subject to the requirements of 49 CFR 393.65(d), it “has identified that currently there is uneven roadside enforcement with regard to the use of gravity fed fuel tanks on auxiliary equipment installed on or used in connection with commercial motor vehicles.”

In support of its application, CMW states:

Most small commercially available internal combustion engines used on auxiliary equipment are equipped from the factory with gravity fed fuel tanks attached to the engine...The cost of modifying these small internal combustion engines to remove the fuel tank from the engine and to re-engineer the fuel delivery system to use a fuel pump to pump fuel from the now removed fuel tank to the internal combustion engine requires electrical wiring to be run from the commercial motor vehicle to operate the fuel pump. Manufacturers who have gone to this additional expense, question the reasoning of removing the fuel tank from above the engine and placing it beside the engine and equipping the system with a fuel pump to transfer fuel from the tank to the engine. Since the auxiliary equipment only operates when the CMV is not operating on the highway there does not seem to be any legitimate safety reason for this requirement. A review of previous Federal Register notices does not describe why this requirement was added for fuel systems for auxiliary equipment on commercial motor vehicles, when this equipment is not operating while the CMV is operating on the highway.

The exemption would permit CMW and all other CMV operators to utilize auxiliary equipment with gravity fed fuel systems when the CMV is not operating on the highway. CMW believes that granting the temporary exemption will maintain a level of

safety that is equivalent to or greater than the level of safety achieved without the exemption because the auxiliary equipment will not be operating while the CMV is operating on the highway. CMW “believes that because the engine on the auxiliary equipment will not be operating while the CMV is traveling on the highway, so the potential risk of gravity fed fuel systems leaking on a hot or operating engine will not be possible, thereby eliminating the possibility of fire from the auxiliary equipment.”

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on CMW’s application for an exemption from the requirements of 49 CFR 393.65(d). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the “Addresses” section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: March 21, 2019.

Larry W. Minor,
Associate Administrator for Policy.

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